UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2002/NGO/42
24 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 of the provisional agenda

CIVIL AND POLITICAL RIGHTS

Written statement* submitted by Human Rights Advocates International, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

---

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0202010372*

ENG

1. Human Rights Advocates deplore and condemn the terrorist actions of September 11th and all acts of terrorism. In response to the aftermath of the terrorist acts of September 11th, Human Rights Advocates, an NGO with Category II Consultative Status with ECOSOC, submits the following statement on arbitrary detentions in the United States ("U.S.") and possible military tribunals for defendant's suspected in the bombings.

Views of Human Rights Advocates regarding arbitrary detentions

2. The U.S. must continue to protect the civil liberties of all Americans regardless of ethnic and religious diversity.

3. More than 600 people, mainly of Middle Eastern descent are in federal custody. On December 6th, 2001 Attorney General John Ashcroft disclosed that 563 individuals were in custody for immigration violations, while another 60 on federal criminal charges.1 They are secretly being moved from place to place and are limited in personal contact. Detainees held on immigration charges are not entitled to federal public defenders and must hire attorneys or find pro bono attorneys. Most will not be freed until cleared on all suspicions leading to their arrest, though lacking representation and unaware of the reasoning for their detention.2

4. Attorney representation, a civil right proves difficult for most detainees. Many are held without information of their whereabouts and wrongdoings. Many are unable to meet with attorneys. While Attorney General Ashcroft promised to make sure that Immigration and Naturalization Services ("I.N.S") inform individuals of their rights to counsel it has proven difficult. Many attorneys listed on flyers distributed to detainees do not handle immigration matters, thereby unaware of the expediency of certain matters, while other telephone numbers listed are misprinted.3 With hundreds detained, and such few attorneys made available, Attorney General Ashcroft's hopes go unfulfilled. Furthermore, information regarding detainees held on suspicion of terrorist activity are held secret, thereby denying any attention by counsel or legal analysts to their situations.

5. Secret detentions violate legal rights and civil liberties. Concerns include: arbitrary and prolonged detentions, including lack of timely judicial review; violation of procedural rights, including denial of timely access to counsel and impediments of communication between detainees and counsel; physical and verbal abuse of detainees, denial of medical attention; abusive interrogation practices to name a few. Human Rights Watch's request for visitation rights of detainees held in New Jersey and New York prison have constantly been denied. Names of such detainees have not been revealed, where they were being held, who was being held without charges, who had legal counsel, and how many were being held as material witnesses. These violations go against international laws and I.N.S.'s own detention standards.

6. One example reported in the New York Times Magazine is of Dr. Al Bader al-Hazmi.4 On 12 September 2001 FBI agents raided the home of al-Hazmi arresting him under suspicions of

---

1 Darlen Superville, Associated Press, *Lawyers Say Detainees Held in Legal Limbo*, S.F. CHRON, Jan. 4, 2002.
2 Id.
3 Id.
4 Deborah Sontag, *Who is this Kafka That People Keep Talking Mentioning?*, N.Y. TIMES, 2001 (Magazine), at 57.

relations to terrorists sharing his last name. Detained for 13 days, al-Hazmi was subjected to continuous interrogation and one incidence of violence, unaware of his identification as a suspect. Suspicions the government acted upon were al-Hazmi's Saudi descent, his common Arab last name, phone calls received from a bin Laden, his trip to San Diego for a course on radiology and his recent trips to Boston and Washington for medical courses.5 Shackled at the hands and feet, al-Hazmi was transported with other suspicious detainees to New York City for further interrogation and released on the 13th day and escorted back to his home. Publicly humiliated in his community and the world, the US government simply offered what came close to a public apology.

7. Another reported example is of Tarek Mohamed Fayad.6 Arrested at a gas station, for violating a student visa, Fayed, an Egyptian dentist, was moved from one detention center to another and sent across country to New York City.7 It took lawyers one month to locate their client. As of 4 January 2002 Fayad still remained in a detention center and faces deportation, although the FBI has cleared him of terrorist involvement.

8. The Patriot Act passed by Congress further allows the Department of Justice ("DOJ") to detain non-citizens suspected of terrorism without charge for seven days. 8This is only subject to limited judicial review, allowing indefinite detention of those "certified" as terrorists to be stripped of all legal rights. The DOJ further issued a series of rules without public or congressional debate that go beyond provisions authorized by Congress in the Patriot Act. Additional violations by the U.S. government include holding of detainees incommunicado, denial of information pertaining to their arrest, questionable interrogation practices, and denial of legal counsel all together.

Views of Human Rights Advocates regarding use of military tribunals

9. The President of the United States issued an executive military order on November 13th authorizing military trials of criminal defendants for "violations of the law of war". The President declared that the order was implemented primarily to protect the United States and its citizens from further terrorist's attacks.

10. The Order states military tribunals will not necessarily abide by principles of law nor by rules of evidence as recognized in the trial of criminal cases in the U.S. district courts because such compliance would be impracticable. Individuals subject to this order are any non-citizens who are members "of the organization known as Al-Qaida"; who has "engaged in, aided or abetted, conspired to commit, or prepared to commit acts of international terrorism, that have or are intended to have adverse effects on the citizens, national security, foreign policy or economy of the United States"9.

11. The Presidential order bypasses all fundamental principles of law and justice found in the U.S. Constitution and international law on several grounds.10

---

5 Id.
6 Superville, *supra* note 1.
7 Id.
8 The Patriot Act, 107th Congress, H.R. 3162, October 24, 2001.
9 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions Under the November 13, 2001 "Military Order"*.
10 *Tribunals Threaten Principles of Justice*, Amnesty Now, Winter 2001-2002, at 9

12. First, the proposed defendants cannot be subject to a military tribunal because their criminal action does not fit the legal definition of war crimes. Defendants can only be tried for crimes of war if committed in the context of either an international or internal armed conflict between two or more states. In the current situation, no armed conflict of any kind exists.11 Common Article 2 of the 1949 Geneva Convention defines international conflict as "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination". There is no international armed conflict in this situation because the U.S. and its battle against a foreign terrorist network satisfies no part of this definition. Article I of the Protocol Additional II of 1977 defines internal armed conflict as a state's fight "between its armed forces and dissident armed forces or other organized armed groups". No internal conflict exists because the September 11th attacks did not create a situation of internal armed conflict inside the U.S.

13. Secondly, the attacks on the World Trade Center do not constitute war crimes and therefore cannot be subject to military tribunals. The proposed defendant's terrorist actions did not occur in the context of an armed conflict between two states. Both the Al-Qaida organization and the Taliban government are non-state entities. Al-Qaida is a network spread across the international arena and its members derive from various nationalities. The U.S. did not consider the Taliban regime wielding State authority. The Secretary of State even refrained from adding Afghanistan onto the list of state sponsored terrorism because they do not consider the Taliban holding state authority in that country.12 The U.S is not at war with the State of Afghanistan but rather with a criminal network and an unrecognized regime. The U.S. is fighting a metaphorical war against non-state organizations with individuals consisting of various nationalities.13 Because there is no direct conflict between states, the terrorist actions do not constitute war crimes and cannot be tried by military tribunals.

14. The Military Order would also be in direct violation of the International Covenant on Civil and Political Rights (ICCPR) treaty.14 Article 4 of the treaty contains several "derogation" clauses that set out rules to govern the suspension of rights during a state of emergency that threatens the life of the nation. First, the present terrorist actions do not threaten the life of the nation. Second, the treaty further states that measures taken in derogation of a right to a fair trial are strictly limited and largely forbidden. The trials envisioned by the Presidential Order strip the non-citizens of fundamental fair trial rights to such an extent that they reach beyond the scope the treaty. The military tribunals follow no set standards, they follow no precedent, and they follow no guidelines that would guarantee a fair trial to the proposed defendants.15 Rather they will be composed of ad hoc rules, the determination of which will occur at some future time.

Human Rights Advocates recommends that the Commission to the Working Group on Arbitrary Detention and the Special Rapporteur on Torture to examine the situation of detainees in the U.S. Further, the commission should request that the U.S. and other countries fighting terrorism follow international law to dispense criminal justice.

---

11 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions under the November 13, 2001 "Military Order"*.
12 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions under the November 13, 2001 "Military Order"*.
13 Id.
14 Id.
15 Id.